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09/713,659	11/15/2000	Daniel Geier	7.035	3551

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EXAMINER

SINGH, SUNIL

ART UNIT

PAPER NUMBER

3673

DATE MAILED: 06/05/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No. <b>09/713,659</b>	Applicant(s) <b>Geier et al.</b>
	Examiner <b>Sunil Singh</b>	Art Unit <b>3673</b>

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

1)  Responsive to communication(s) filed on \_\_\_\_\_.

2a)  This action is FINAL. 2b)  This action is non-final.

3)  Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

**Disposition of Claims**

4)  Claim(s) 1-30 is/are pending in the application.

4a) Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5)  Claim(s) \_\_\_\_\_ is/are allowed.

6)  Claim(s) 1-30 is/are rejected.

7)  Claim(s) \_\_\_\_\_ is/are objected to.

8)  Claims \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

9)  The specification is objected to by the Examiner.

10)  The drawing(s) filed on \_\_\_\_\_ is/are a)  accepted or b)  objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11)  The proposed drawing correction filed on \_\_\_\_\_ is: a)  approved b)  disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12)  The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

13)  Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)  All b)  Some\* c)  None of:

1.  Certified copies of the priority documents have been received.

2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.

3.  Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\*See the attached detailed Office action for a list of the certified copies not received.

14)  Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

a)  The translation of the foreign language provisional application has been received.

15)  Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

1)  Notice of References Cited (PTO-892)

4)  Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_

2)  Notice of Draftsperson's Patent Drawing Review (PTO-948)

5)  Notice of Informal Patent Application (PTO-152)

3)  Information Disclosure Statement(s) (PTO-1449) Paper No(s). 2

6)  Other:

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The restriction requirement made in office action mailed 1/29/02 has been withdrawn.

*Specification*

1. The disclosure is objected to because of the following informalities: at page 3 line 9, Patent Number 4,618,133 is incorrect it should be --5618133--. Appropriate correction is required.

*Claim Rejections - 35 USC § 112*

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 1-30 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The claims are replete with indefiniteness and antecedent basis errors that are too numerous to mention each one specifically. Applicants should carefully check all the claims to correct all indefiniteness and antecedent basis problems. Some examples are noted.

Claim 1 lines 4 and 5, "a fixed eccentric weight" and "a free swinging eccentric weight" are recited; however, subsequent to that occurrence applicant then throughout claim 1 and some of the dependent claims, applicant recites, "said fixed weight" and "said free swinging weight"; applicant should use consistent terminology to avoid confusion.

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Claim 9 line 4, "said housing" should be --said exciter housing--.

Claim 9 lines 8,10 and 13, "said free swinging weight" is recited; however, it is not clear if it relates to the "free swinging eccentric weight" recited in claim 9 line 6 or to the "free swinging eccentric weight" recited in claim 1 line 5.

Claim 12 line lines 11-12, "a first end" is recited; claim 12 lines 8-9, "a first end" is recited; this is incorrect and renders the claim indefinite.

Claim 12 line 9, "said bearings" needs to be related to "at least two bearings" recited in claim 12 lines 5-6.

Claim 13 line 3, "said first eccentric weight" lacks clear antecedent basis; it appears that applicant intends to tie it into "fixed eccentric weight" and "a first fixed weight" recited in claim 13 line 2.

Claim 13 line 13, "said exciter" renders the claim indefinite since it is unclear if it relates back to the "first exciter shaft" or the "second exciter shaft".

Claim 13 lines 13-14, "said first fixed weight" appears to be incorrect.

Claim 14 line 4, "said drum assembly" appears as if it should be related to "at least one drum assembly" recited in claim 14 line 3.

Claim 16 line 2, "one of said bearings" appears as if it should be related to "at least first and second bearings" recited in claim 14 lines 10-11.

Claim 20 line 7, "said fixed weight" appears as if it should be related to "fixing an eccentric weight" recited in claim 20 line 5.

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Claim 20 line 11, "respective ends" appears as if it should be related to "respective ends" recited in claim 20 line 7.

Claim 21 line 3, "said bearings" appears as if it should be --said at least two bearings--.

Claim 22 line 12, "one of said bearings" needs to be related to "at least two bearings to a second exciter shaft" recited in claim 22 lines 4-5.

Claim 24 is indefinite since one cannot determine what the means and bounds are for the claimed limitation "without the use of any hardware".

Claim 27 lines 4-6, is indefinite since one cannot determine what the means and bounds are for the claimed limitation "without the use of any hardware".

***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1,5,8 are rejected under 35 U.S.C. 102(b) as being anticipated by Stanton (US 4586847).

Stanton discloses an exciter assembly comprising an exciter housing (6,15); an exciter shaft (5) rotatably journaled in said exciter housing; a fixed eccentric weight (25,26) rotationally fixed to said exciter shaft; a free swinging eccentric weight (this is considered as fluent mass (33) in members (27,28)) mounted on said exciter shaft so as to rotate with respect to said exciter

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shaft between a first angular position in which the eccentricity of said free swinging weight adds to the eccentricity of said fixed weight (see col. 4 lines 27-36) and a second angular position in which the eccentricity of said free swinging weight detracts from the eccentricity of said fixed weight (see col. 4 lines 37-43), wherein said free swinging weight is mounted on said exciter shaft so as to be restrained from substantial axial movement along said exciter shaft without the use of any retaining structure that is fixed to said free swinging weight.

(Re claim 5), it appears that the fixed weight is formed integrally with said exciter shaft.

Furthermore, it should be noted that it has been held that the term "integral" is sufficiently broad to embrace constructions united by such means as fastening and welding. In re Hotte, 177 USPQ 326, 328 (CCPA 1973).

(Re claim 8), a drum (1) surrounds said exciter housing, which is rotationally supported on a surface to be compacted, and which is excited to vibrate by said eccentric weights.

***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

7. Claims 6-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Stanton '847 in view of Century (U.S. Pat. 3561336).

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Stanton discloses the invention substantially as claimed. However, Stanton is silent about his motor having a rotary output shaft which is coupled to the exciter shaft and which is co-axial with the exciter shaft, the motor output shaft being splined directly to the exciter shaft. Century teaches having a motor (70) having a rotary output shaft (80) which is coupled to an exciter shaft (47) and which is co-axial with the exciter shaft, the motor output shaft being splined (81,61) directly to the exciter shaft (see Fig. 2). It would have been considered obvious to one of ordinary skill in the art to modify Stanton by substituting the motor/ shaft coupling means as taught by Century for the motor/shaft coupling means as disclosed by Stanton since it would be an obvious design choice to substitute equivalent parts for performing equivalent function. It should be noted that such an arrangement allows for ample backlash and play.

8. Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Stanton '847 in view of Lebrero Martinez (US . 3892496)

Stanton discloses the invention substantially as claimed. However, Stanton lacks a free swinging weight having a tab extending over an adjacent end of the fixed weight and that engages a first side of said fixed weight when said free swinging weight is in said first angular position and that engages a second side of said fixed weight when said free swinging weight is in said second angular position. Lebrero Martinez teaches a free swinging weight (3) having a tab (7) extending over an adjacent end of the fixed weight (2) and that engages a first side (5) of said fixed weight when said free swinging weight is in a first angular position and that engages a second side of said

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fixed weight when said free swinging weight is in said second angular position (see col. 2 line 20+).

It would have been considered obvious to one of ordinary skill in the art to modify Stanton by substituting the dual-amplitude vibrating means as taught by Lebrero Martinez for the dual-amplitude vibrating means disclosed by Stanton since such an arrangement would be less complicated to construct.

***Allowable Subject Matter***

9. Claims 2-3, 9-11, 13, 15-19, 21-26, 28-30 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, second paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

10. Claims 12,14,20 and 27 would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, second paragraph, set forth in this Office action.

11. As allowable subject matter has been indicated, applicant's reply must either comply with all formal requirements or specifically traverse each requirement not complied with. See 37 CFR 1.111(b) and MPEP § 707.07(a).

***Conclusion***

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12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sunil Singh whose telephone number is 308-4024. The examiner can normally be reached on Monday through Friday from 8:30 AM to 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Heather Shackelford, can be reached on (703) 308-2978. The fax phone number for the organization where this application or proceeding is assigned is 305-7687.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 308-2168.

Sunil Singh



Patent Examiner

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5/29/02